O. Sale of Goods/50

1950

File No.

Legal Department

A BRANCH

K

Subject:—

Opinions under the

Indian sale of Goods Act

E/17

O. Sale of Goods/1950

File No.

Gen. 194 e.

281-A

C O N T E N T S.

Legal Department File No. 0 Sale of Goods/50.

Cr. No.	Compilation No.	Subject.	Pages.
1)~~xxxxNo.X~~ 2808/27-2-50.		Opinions under the Indian Sale of Goods Act, 1930. Cs. 39,61.	
1) C.No. 2808/27-2-50.		Question regaring payment of Wharfage and demurrage charges to Railway. Whether the supplier of Goods is responsible for the same.	1-2.
2) C.No. 2946/2-3-50.		Sec. 9(2).- Re. contract entered into by the Administrator of Relief Camp Vizagpr for the supply o certain Goods. Payment of price in respect of	3-4.
3) C.No. 218/6-1-50.		This contract of supply of flags to Govt. Question whether the claim of the contractor in respect of flags not taken by Govt. is valid and tenable and whether the remaining flags should now be disposed of by Govt. through the Govt. Grain shols and co-operative stores and Govt. Grocery shops.	5-10.

N.V.I.
6/7
4c.

RHB 6/8

NLCD 6/8

Office of the F.L.A.

The Indian Sale of Goods Act, 1930 - Sections 39, 61.

The deduction of Rs. 288-13-0 on account of wharfage and demurrage is legally tenable for Mr. G.L. Khambati, with whom the order for the supply of 31tons of Hexphalte was placed, could easily have been that unless the Railway Receipt was received by the Baroda State Architect and Chief Engineer in time there would be wharfage and demurrage levied for the failure to remove the goods within time. In the present case the goods were despatched from Bombay to Baroda on 6th May 1948 and the Railway Receipt was sent on the 19th May 1948, with the result that there was abnormal delay in despatching the Railway receipt. Consequently, the wharfage and demurrage had to be paid by the State Architect and Chief Engineer, Baroda. Such claim for wharfage and demurrage would be covered by section 61(1) of the Indian Sale of Goods Act.

The deduction of Rs. 841-13-0 for leakage does not appear to be well-grounded. Admittedly it was an F.O.R. contract with the result that as soon as the goods were delivered to the Railway, property therein vested in Baroda State. The goods were consigned at the risk of the purchaser. Although there is nothing in the terms of the Contract as to how the goods were directed to be consigned, the fact that the seller consigned the goods at the risk of the purchaser has not been challenged. Consequently, no damage can be claimed from the seller under section 39(2) of the Indian Sale of Goods Act

It is alleged that the seller did not supply the material in good drums. If the drums were leaking at the time of consignment the railway would not have accepted them. Consequently, this claim on account of the leakage does not appear to be well founded.

As suggested by the Dy. Secretary, P.W.D. , it is desirable that Government should compromise with the seller in respect of this claim.

Sd/- 27/2

Remembrancer of Legal Affairs.

U.P. to P.W.D., No. 2808, dated the

27th February 1950.

N.V.D.
6/7
4c.

Office of the F.A.

Indian Sale of Goods Act. Sec. 9(2).

Since the supplies were made and accepted without fixing the rates and after the old contract was terminated, Mr. Mangal would, under section 9(2) of the Indian Sale of Goods Act, be entitled to reasonable price, which would be equal to the market price. Mr. Mangal should, therefore, be paid at the market rate and the transport and other incidental charges.

Sd/- 1/3

Remembrancer of Legal Affairs,

U.P. to F.I.D. No. 2946 , dated the 2nd March 1950.

N.V.L.
6/7
4c.

Office of the F.L.A.

As advised by the F.L.A. in his last opinion No. 11473 dated 14th October 1949, a letter was addressed to Messrs. Chunilal Mulchand & Co. narrating all the facts and intimating that arrangements were being made to make payment for the 529 flags and to return 4,602 flags. In their letter dated the 10th November -949, Messrs. Chunilal Mulchand & Co. have flatly repudiated the non-fulfilment of the contract within the stipulated time and the arrangement for the sale of the flags through the co-operative societies and Government Grain shops as a sort of favour to them to avoid loss. They have been claiming the price of all the flags in accordance with the contract. The question raised for the F.L.A's consideration is whether the claim of Messrs. Chunilal Mulchand & Co. is valid and tenable and whether the remaining flags should now be disposed of by Government through the Government GrainShops and co-operative stores and Government Grocery Stores.

2. It is true that merely taking delivery of the flags does not amount to acceptance unless some act in relation to them inconsistent with the ownership of the seller has been done (see section 42 of the Indian Sale of Goods Act) and when the buyer refuses to accept the goods, he is not bound to return them to the seller (see section 43). The buyer is not bound to put himself to the expense and trouble of returning the goods and it is the seller's business to take away the goods if he is so minded and if the buyer offers to retrun them and ~~xxxx~~ the seller refuses to take them, the

buyer may charge for their keep (see Mulla's Contract Act, p.231). Consequently, the whole question would turn upon whether or not there was acceptance of the flags in the present case. Under section 50 of the Indian Contract Act, if the goods are accepted without protest, no right of action can survive for the late delivery. The discussion of the case with Messrs. Phadkar and Joshi of the Political and Services Department discloses. that Messrs. Chunilal Mulchand & Co. were not ready withthe flags and made a defualt in the supply on the stipulated dat , viz., the 9th August 1949; and that consequently on the 10th, there was a deficit of flags particularly for supplying the Collector of Bijapur; that thereupon the deficit was made good by inviting the other Contractor, Mr. Chaubal, to supply the necessary number and that contractor in his turn procured the flags from the market; that, nevertheless, in the afternoon of the 10th, flags were accepted from Messrs. Chunilal Mulchand & Co. with full knowledge that they would be surplus in number which it would not be possible to dispose of. No protest was made to Messrs. Chunilal Mulchand & Co. about their default or delay; nor was it explained to them then that the flags were being accepted as a special concession with a view to avoid loss to them by getting them sold through Government Grain Shops, etc. From these facts, even apart from the version given by Messrs. Chunilal Mulchand & Co., it would follow that the flags were offered and accepted after the stipulated time and Government would not, therefore be entitled to repudiate the contract. Further, 483 flags out of the number of flags delivered

to Government were supplied to the Collector of Nasik apparently before informing the firm as to how the supply of the flags would be treated by Government, that is to say, whether as a breach of the contract or acceptance under protest. This supply of flags to the Collector of Nasik would be inconsistent with the ownership of the firm within the meaning of section 42 of the Indian Sale of Goods Act. The acceptance of the flags from the firm and the supply of flags to the Collector of Nasik were done before Mr. DeSouza, the Manager of the firm, was called by the Chief Secretary and the Chief Secretary explained to him about the non-fulfilment of the contract within the stipulated time. Consequently, whatever arrangement was arrived at between Mr. DeSouza and Chief Secretary as to how the remaining flags were to be disposed of, this arrangement would in no way affect the legal position regarding the fulfilment of the previous contract, namely, the supply of 5,000 flags, for which an order was placed with the firm by Government's letter dated 6th August 1949.

3. Although the firm has been repudiating the arrangement which was arrived at between the Chief Secretary and Mr. DeSouza, it may not be difficult to prove it; but it is doubtful whether this kind of arrangement would be binding on the firm, for this arrangement would be involve novation the validity of which would depend upon the scope of the authority of Mr. DeSouza. Since the firm has been repudiating this arrangement, it

would be difficult to say that Mr. DeSouza had any such authority on behalf of the firm, particularly when there is no writing in support of the arrangement as expressed to have been made on behalf of the firm. In the circumstances, it appears desirable that Government should try to dispose of the remaining flags through the co-operative societies and Government Grain shops with a view to mitigate the loss and to arrive at an amicable settlement if possible.

4. The 26th of January 1950 would afford another opportunity to dispose of these flags. It is understood that Government are in need of over 1,000 flags for supplying which separate arrangements are being made. Perhaps that number may be drawn from the stock of flags supplied by Messrs. Chunilal Mulchand & Co. and that Company may also be invited to make an attempt to dispose of as many flags as possible out of the stock on this occasion so that the loss to either party may be mitigated as much as possible.

Sd/- 6/1

Remembrancer of Legal Affairs.

U.P. to P. & S.L. No. 218 dated the 6th January 1950.

N.V.D.
6/7
4c.